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Management, Inc.  
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9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 TIMOTHY TOTH, individually and on behalf  
of all others similarly situated,

12 Plaintiff,

13 v.

14 MIDLAND CREDIT MANAGEMENT, INC.,

15 Defendant.

Case No. 2:15-cv-00018-RFB-NJK

**ANSWER**

16 Midland Credit Management, Inc. ("MCM") answers the Complaint as follows:

17 1. Answering paragraph 1, MCM admits that the Fair Debt Collection Practices Act  
18 ("FDCPA") was enacted as 15 U.S.C. § 1692 *et seq.* MCM denies Plaintiff's characterization of  
19 the FDCPA and the statute speaks for itself. Except as specifically admitted, MCM denies all  
20 remaining allegations in paragraph 1.

21 2. MCM denies the allegations in paragraph 2.

22 3. MCM lacks knowledge and information sufficient to form a belief as to the  
23 truthfulness of the matters alleged in paragraph 3 and therefore denies them.

24 4. Answering paragraph 4, MCM admits Plaintiff has alleged a violation of the  
25 FDCPA. Except as specifically admitted, MCM denies all remaining allegations in paragraph 4.

26 5. MCM lacks knowledge and information sufficient to form a belief as to the  
27 truthfulness of the matters alleged in paragraph 5 and therefore denies them.  
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1           6.     MCM denies the allegations in paragraph 6.

2           7.     MCM denies the allegations in paragraph 7.

3           8.     Answering paragraph 8, MCM admits federal question jurisdiction exists as this  
4 case arises out of an alleged violation of the FDCPA. Except as specifically admitted, MCM  
5 denies all remaining allegations in paragraph 8.

6           9.     Answering paragraph 9, MCM admits Plaintiff has alleged MCM violated the  
7 FDCPA. Except as specifically admitted, MCM denies all remaining allegations in paragraph 9.

8           10.    Answering paragraph 10, MCM admits it is registered with the State of Nevada as  
9 a foreign corporation. Except as specifically admitted, MCM lacks knowledge and information  
10 sufficient to form a belief as to the truthfulness of the remaining matters alleged in paragraph 10  
11 and therefore denies them.

12          11.    MCM lacks knowledge and information sufficient to form a belief as to the  
13 truthfulness of the matters alleged in paragraph 11 and therefore denies them.

14          12.    Answering paragraph 12, MCM admits that MCM has at times acted as a debt  
15 collector as defined by 15 U.S.C. § 1692a(6). Except as specifically admitted, MCM denies all  
16 remaining allegations in paragraph 12.

17          13.    Answering paragraph 13, MCM admits that MCM has at times acted as a debt  
18 collector as defined by 15 U.S.C. § 1692a(6). Except as specifically admitted, MCM denies all  
19 remaining allegations in paragraph 13.

20          14.    MCM lacks knowledge and information sufficient to form a belief as to the  
21 truthfulness of the matters alleged in paragraph 14 and therefore denies them.

22          15.    Answering paragraph 15, MCM admits that Plaintiff is an individual. MCM lacks  
23 knowledge and information sufficient to form a belief as to the truthfulness of the remaining  
24 matters alleged in paragraph 15 and therefore denies them.

25          16.    MCM denies the allegations in paragraph 16.

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1           17. MCM admits that Plaintiff did obtain a Bank of America Bass Pro Shops  
2 Conservation Card and subsequently failed to pay all amounts due and owing on the card.  
3 Except as specifically admitted, MCM denies the allegations in paragraph 17.

4           18. MCM lack knowledge and information sufficient to form a belief as to the  
5 truthfulness of the matters alleged in paragraph 18 and therefore deny them.

6           19. Answering paragraph 19, MCM admits that Midland Funding LLC purchased a  
7 debt of Plaintiff. Except as specifically admitted, MCM denies the allegations in paragraph 19.

8           20. Answering paragraph 20, MCM admits that it sent a letter to Plaintiff dated  
9 January 4, 2014, which speaks for itself. MCM denies any inconsistent characterization of the  
10 same and the remaining allegations in paragraph 20.

11           21. Answering paragraph 21, MCM admits that Plaintiff sent a letter to MCM dated  
12 February 12, 2014. In that letter, Plaintiff elected private arbitration of “this dispute and alleged  
13 debt.” Except as specifically admitted, MCM denies the allegations in paragraph 21.

14           22. Answering paragraph 22, MCM admits that it telephoned Plaintiff on January 23,  
15 2014, and spoke with Plaintiff. Except as specifically admitted, MCM denies the allegations in  
16 paragraph 22.

17           23. Answering paragraph 23, MCM admits that it attempted to telephone Plaintiff on  
18 more than one occasion. Except as specifically admitted, MCM denies the allegations in  
19 paragraph 23.

20           24. Answering paragraph 24, the statute referred to therein speaks for itself. MCM  
21 denies any inconsistent characterization of the same.

22           25. MCM denies the allegations in paragraph 25.

23           26. MCM lacks knowledge and information sufficient to form a belief as to the  
24 truthfulness of the matters alleged in paragraph 26 and therefore denies them.

25           27. MCM lacks knowledge and information sufficient to form a belief as to the  
26 truthfulness of the matters alleged in paragraph 27 and therefore denies them.

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1           28.     MCM lacks knowledge and information sufficient to form a belief as to the  
2 truthfulness of the matters alleged in paragraph 28 and therefore denies them.

3           29.     Answering paragraph 29, the statute referred to therein speaks for itself. MCM  
4 denies any inconsistent characterization of the same and the remaining allegations in paragraph  
5 29.

6           30.     MCM lacks knowledge and information sufficient to form a belief as to the  
7 truthfulness of the matters alleged in paragraph 30 and therefore denies them.

8           31.     MCM denies the allegations in paragraph 31.

9           32.     MCM denies the allegations in paragraph 32.

10          33.     MCM denies the allegations in paragraph 33.

11          34.     MCM denies the allegations in paragraph 34.

12          35.     MCM denies the allegations in paragraph 35.

13          36.     MCM denies the allegations in paragraph 36.

14          37.     MCM denies the allegations in paragraph 37.

15          38.     MCM denies the allegations in paragraph 38.

16          39.     MCM denies the allegations in paragraph 39.

17          40.     MCM denies the allegations in paragraph 40.

18          41.     MCM denies the allegations in paragraph 41.

19          42.     MCM denies the allegations in paragraph 42.

20          43.     MCM denies the allegations in paragraph 43.

21          44.     MCM denies the allegations in paragraph 44.

22          45.     Answering paragraph 45, MCM incorporates by reference its responses to  
23 paragraphs 1 through 44.

24          46.     MCM denies the allegations in paragraph 46.

25          47.     MCM denies the allegations in paragraph 47.

26          48.     Answering Plaintiff's Prayer for Relief, MCM denies Plaintiff is entitled to any of  
27 the relief requested therein.

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**Affirmative Defenses**

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2 1. Plaintiff's claims are barred by the arbitration provisions in the applicable credit  
3 card agreement(s).

4 2. The allegations in the complaint fail to state a claim upon which relief may be  
5 granted.

6 3. To the extent that any violation of law occurred, which MCM expressly denies,  
7 such violation was not intentional and resulted from bona fide error notwithstanding the  
8 maintenance by MCM of procedures reasonably adapted to avoid any such error.

9 4. Plaintiff's claims and that of the alleged members of the putative class are barred  
10 by the doctrine of unclean hands.

11 5. MCM acted in good faith at all times in their dealings with Plaintiff and the  
12 alleged members of the putative class, and if any conduct by MCM is determined to be unlawful,  
13 which MCM expressly denies, such conduct is not willful and should not give rise to liability.

14 6. Plaintiff and the alleged members of the putative class have failed to take  
15 reasonable steps to mitigate his damages, if any, and therefore are barred from recovering such  
16 damages from MCM.

17 7. MCM has, at all relevant times, acted in good faith with respect to Plaintiff and  
18 the alleged members of the putative class in an effort to comply with all applicable laws.

19 8. Without admitting that any damages exist, if any damages were suffered by  
20 Plaintiff or the alleged members of the putative class, they were proximately caused by and  
21 contributed by persons other than MCM. The liability, if any exists, should be apportioned  
22 among MCM and other responsible parties.

23 9. Plaintiff's claims against MCM and those of the alleged members of the putative  
24 class are barred, in whole or in part, to the extent that any injury or loss sustained was caused by  
25 increasing or supervening events over which MCM had or has no control.

26 10. To the extent that Plaintiff and the alleged members of the putative class have  
27 suffered any damages as a result of MCM's acts or omissions, which MCM denies, MCM is  
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1 entitled to equitable indemnity from other persons or entities causing or contributing to such  
2 damages, if any.

3 11. Plaintiff's action cannot be properly maintained as a class action because Plaintiff  
4 has failed to plead, and cannot establish the necessary procedural elements for class treatment.

5 12. Plaintiff's action cannot be properly maintained as a class action because a class  
6 action is not an appropriate method for the fair and efficient adjudication of the claims described  
7 in the Complaint.

8 13. Plaintiff's action cannot be properly maintained as a class action because common  
9 issues of fact or law do not predominate and to the contrary, individual issues predominate.

10 14. Plaintiff's action cannot be properly maintained as a class action because  
11 Plaintiff's claims are not representative or typical of claims of the putative class.

12 15. Plaintiff's action cannot be properly maintained as a class action because Plaintiff  
13 is not a proper class representative.

14 16. Plaintiff's action cannot be properly maintained as a class action because Plaintiff  
15 and the alleged putative class counsel are not adequate representatives for the alleged putative  
16 class.

17 17. Plaintiff's action cannot be properly maintained as a class action because Plaintiff  
18 cannot satisfy any of the requirements for class action treatment, and class action treatment is  
19 neither appropriate or constitutional.

20 18. Plaintiff's action cannot be properly maintained as a class action because there is  
21 not a well-defined community of interest in the questions of law or fact affecting Plaintiff and the  
22 members of the alleged putative class.

23 19. Plaintiff's action cannot be properly maintained as a class action because the  
24 alleged putative class is not ascertainable, nor are its members identifiable.

25 20. Plaintiff's claims are barred by the forum selection clauses in the applicable credit  
26 card agreement(s).

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1           WHEREFORE, MCM requests that the Court enter judgment in favor of MCM and  
2 against Plaintiff on all of Plaintiff's claims and those of the alleged members of the putative  
3 class, and that:

4           A.     Plaintiff and the alleged members of the putative class take nothing by way of  
5 their Complaint,

6           B.     The Court award MCM its reasonable attorney's fees and costs, and

7           C.     The Court award MCM such other relief as it deems just and equitable.

8     Dated this 28th of January, 2015.

NAYLOR & BRASTER

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10           By:    /s/ Jennifer L. Braster  
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14           Attorneys for Midland Credit Management, Inc.

**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am an employee of NAYLOR & BRASTER and that on this 28th day of January 2015, I caused the document **ANSWER** to be served by the Court's CM/ECF System to the following:

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